

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:18-cv-108-FDW**

JOSHUA LEE BLACKWELL,)
)
 Plaintiff,)
)
 vs.)
)
 ALAN HOUSER, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court on initial review of Plaintiff's Complaint pursuant to 28 U.S.C. § 1915, (Doc. No. 1). Plaintiff is proceeding in forma pauperis, (Doc. No. 7).

Pro se Plaintiff Joshua Lee Blackwell, a North Carolina inmate currently incarcerated at Tabor Correctional Institution, filed this action on July 2, 2018, pursuant to 42 U.S.C. § 1983, against Defendants Alan Houser, John Piland, and Judy Humphries based on his claim that, in late 2015 and early 2016, Defendants were deliberately indifferent to his serious medical needs related to his right eye while he was a pre-trial detainee at the Lincoln County Detention Center in Lincolnton, North Carolina.

Because Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is "frivolous or malicious [or] fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2). In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

Plaintiff filed an almost identical action against the same Defendants on April 22, 2016, and on October 18, 2017, this Court granted summary judgment to Defendants based on Plaintiff's failure to exhaust his administrative remedies and, alternatively, on the merits of Plaintiff deliberate indifference claim against Defendants. See (Order, Blackwell v. Houser, Civil No. 5:16cv67, Doc. No. 125). Furthermore, on April 19, 2018, the Fourth Circuit Court of Appeals affirmed this Court's decision in an unpublished opinion. See (Id., Doc. No. 131). This action is, therefore, barred by res judicata and will be dismissed. See Ohio Valley Envtl. Coalition v. Aracoma Coal Co., 556 F.3d 177, 210 (4th Cir. 2009) (noting that an action will be barred by res judicata where there was a judgment on the merits in a prior suit resolving claims by the same parties or their privies, and the subsequent suit arises out of the same transaction or series of transactions as the claim resolved by the prior judgment).

IT IS, THEREFORE, ORDERED that:

Plaintiff's Complaint is **DISMISSED** with prejudice for the reasons stated herein.

The Clerk is directed to close the case.

Signed: August 13, 2018



Frank D. Whitney
Chief United States District Judge

